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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,647

04/09/2007

Hirohito Suzuki

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08/31/2010

THE NATH LAW GROUP

112 South West Street

Alexandria, VA 22314

EXAMINER

BELL, KENT L

ART UNIT

PAPER NUMBER

1661

MAIL DATE

DELIVERY MODE

08/31/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/593,647	<b>Applicant(s)</b> SUZUKI, HIROHITO	
	<b>Examiner</b> Kent L. Bell	<b>Art Unit</b> 1661	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on papers filed June 23, 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 6 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 4 and 7-18 is/are allowed.
- 6) ☒ Claim(s) 2 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 2 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kato et al. (JP 05219849 A).

Kato et al. teach a flowering plant wherein the flowering plant has a released petal. Kato et al. teach petals are removed from the base of the flower using tweezers hence anticipating a flowering plant with a released petal (Abstract). Examiner notes Claim 2 is a product by process claim, and the product is anticipated by the reference and the method of cultivating the flowering plant does not have patentable weight for a product by process claim (MPEP 2113 [R-1]).

Claim 5 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kato et al. (JP 05219849 A).

Kato et al. teach a cut flower wherein the cut flower has a released petal. Kato et al. teach petals are removed from the base of the flower using tweezers hence anticipating a cut flower with a released petal (Abstract). Examiner notes Claim 5 is a product by process claim, and the product is anticipated by the reference and the method of cultivating the flowering plant does not have patentable weight for a product by process claim (MPEP 2113 [R-1]).

***Allowable Subject Matter***

Claims 1, 4, and 7-18 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: Applicant's amendment and arguments filed June 23, 2010 overcome the rejections for Claims 1 and 4 in the previous Office action dated March 23, 2010. The newly added claims 7-18 depend upon Claims 1 and 4 and are also allowed.

***Response to Arguments***

Applicant's arguments with respect to claims 2 and 5 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### **Future Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kent L. Bell whose telephone number is 571-272-0973. The examiner can normally be reached on M-Th 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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K. L. Bell

/Kent L. Bell/

Primary Examiner, Art Unit 1661